

REMARKS

Reconsideration in view of the foregoing amendments and the following remarks is respectfully requested. Applicant has reviewed the non-final Office Action of October 13, 2006, and submits that this paper is responsive to all points raised therein. A Petition for Extension of Time is filed concurrently herewith.

Status of the Claims

Claims 12, 14 and 16-24 are presently pending. New claims 22-24 have been added. Applicant submits that no new matter is added by this Amendment.

The present invention relates to an apparatus for transferring fluid compositions for coloring concrete comprising, a tank, a pump, a discharge line, a removable cover, and a system for rinsing the tank, including a fluid intake port and a dispenser for fluid, coupled to the cover, and a controller. The dispenser provides fluid for contacting the walls of the interior of the tank. The pump serves to withdraw fluids from the tank. The controller operates the apparatus and the system for rinsing the tank. The controller includes modes for directing the aqueous fluid intake port to direct the aqueous fluid to enter the interior of the tank and for directing the pump to transfer the concrete coloring fluid from the tank through the discharge line. For example, as a result of this structure, one color can be delivered to a ready mix truck, the tank rinsed, and another different color delivered to another ready mix truck, safely and without leftover color in the tank.

Claims 12, 14, and 16-21 were rejected under 35 U.S.C. §103(a) as being unpatentable over United States Patent No. 5,609,417 to Otte in view of United States Patent No. 3,415,257 to Wellman and United States Patent No. 5,427,126 to Carney. The rejection is respectfully

traversed. As described herein, the combination of Otte, Carney and the Wellman fail to teach or suggest all elements of the claimed invention. Moreover, one of skill in the art would not be motivated to combine Otte, Carney, and Wellman.

Otte describes a chemical mixing apparatus 10 having a mixing tank 24 and a drum 20 that supplies the mixing tank 24. Otte describes that a hydraulic circuit is formed as fluid is drained from the mixing tank 24 and pumped back into the ejectors supplying the mixing tank 24 to mix the fluid. Otte fails to teach or suggest that the aqueous fluid transport line is coupled with a source of pressurized water. Instead, the drum 20 of Otte supplies the mixing tank 24. Notably, Otte's apparatus is described for use in an agricultural setting, for the mixing of fertilizers and pesticides for sprayers or planters, in which a source of pressurized water may not be conveniently available. For at least this reason, Applicant requests withdrawal of the rejection.

The Patent Office next relies on Carney for describing the use of a controller for cleaning and rinsing the tank. However, Carney describes a permanent cleaning system for cleaning a plurality of service tank assemblies located at different sites spaced widely apart from each other. Carney explicitly states at Column 1, Lines 10-20 that its system is intended to provide a clean in place system and not a portable system, and further describes several disadvantages of a portable system, such as those of Otte or of the present invention. See Column 1, Lines 26-40.

Moreover, Carney's system is directed to cleaning and rinsing as opposed to a system used for pumping a concrete coloring fluid to a supply of concrete. Carney's system allows the user to direct different cleaning fluids from different storage tanks 16a-d to different service tanks 10, which are in further communication with a wash tank 30 and a rinse take 32. As such, one of ordinary skill in the art working in the concrete colorant industry to provide a portable

concrete colorant transfer system would not combine Otte (mixing from the agriculture industry) with Carney (clean in place industrial system). In fact, Carney teaches away from the portable nature of the present invention owing to its clean in place nature and its teachings to avoid a portable system. For at least these reasons, Applicant requests withdrawal of the rejection.

The Patent Office relies on Wellman to show that a cover removably attaches to the tank. However, the lids of Wellman are not “removably attachable to the tank” or “attached to the tank by a hinge” as recited in the present claims. Instead, Wellman teaches that its booms 15 have a pneumatic cylinder 18 whose pistons 20 are attached to lid constructions 22 whereby the lids can be raised and lowered. The tubs 24 are adapted to be moved into position beneath the lid constructions 22. See Column 2, Lines 50-56. The lids of Wellman are placed over the tubs 24 and fully removed from the tubs 24. See Figure 3. As such, the lids of Wellman are not removably attachable or attached to the tank by a hinge as recited in the present claims.

Additionally, the spray heads 46 of Wellman merely serve as a diffuser of the cleaning agents. The spray head 46 and the motors 32 and 34 fail to teach or suggest “a controller in electrical communication with the aqueous fluid intake port” or the “controller comprising modes for directing the aqueous fluid intake port to direct the aqueous fluid to enter the interior of the tank.”

Moreover, Wellman is directed to cleaning tubs used in industrial chemical production as opposed to a system used for a concrete coloring pumping fluid to a supply of concrete. Wellman does not relate in any manner to the mixing and spraying technology of Otte. Wellman requires extensive industrial infrastructure to operate its booms 15, pneumatic cylinders 18, and pistons in an indoor industrial setting. As such, one of ordinary skill in the art working in the concrete colorant industry to provide a portable concrete colorant transfer would not combine

Otte (from the agriculture industry) with Wellman and certainly would not combine the teachings of Otte with both Wellman and Carney (clean in place industrial system). Applicant respectfully submits that there is no suggestion or motivation to combine Otte, Carney, and Wellman with a reasonable expectation of success.

The present invention overcomes an unmet and long felt need in the concrete colorant industry. Namely, the present invention provides an apparatus for the safe transfer of a liquid colorant into the hopper of a ready-mix concrete truck. Attached is Applicant's Declaration Under 37 C.F.R. §1.132 describing how Applicant's invention solves a long-felt but unsolved need in the concrete industry.

Should the Examiner have any questions or comments as to the form, content, or entry of this paper, the Examiner is requested to contact the undersigned at the telephone number below. Similarly, if there are any further issues yet to be resolved to advance the prosecution of this application to issue, the Examiner is requested to telephone the undersigned counsel.

Allowance of all pending claims is respectfully requested.

Respectfully submitted,

POLSINELLI SHALTON FLANIGAN SUELTHAUS PC

Date: March 13, 2007

By: /Brian B. Diekhoff/

Brian B. Diekhoff, Reg. No. 46,353

100 S. Fourth Street, Suite 1100

St. Louis, Missouri 63102

Tel: (314) 889-8000

Fax: (314) 231-1776

Attorney for Applicant

uspt@polsinelli.com

Attachment: Exhibit 1 (Declaration Under 37 C.F.R. §1.132)

026514 / 067460

BBDIE 342521